RESOLUTION NO. 2726

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO SIGN A JOINT PROJECT AGREEMENT WITH THE STATE OF ARIZONA FOR PAVEMENT PRESERVATION AT THE PAYSON AIRPORT.

WHEREAS, the Town of Payson owns and operates the Payson Airport ("the Airport"); and

WHEREAS, the Town and the State of Arizona desire to undertake a pavement preservation project ("the Project") at the Airport; and

WHEREAS, the total cost of the Project is approximately $561,064.00; and

WHEREAS, the Town's portion of such cost would be 10%; and

WHEREAS, the State of Arizona has provided the Town with a Joint Project Agreement to implement such Project,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the Joint Project Agreement for Project number E4S1H01C between the Town of Payson and the State of Arizona, a copy of which is attached as Exhibit A ("the Agreement"), is approved in substantially the form attached.

Section 2. That Kenny J. Evans, Mayor of the Town of Payson, is authorized to execute the Agreement in substantially the form attached.

Section 3. That the Town of Payson, acting through its Mayor and other appropriate officers, is authorized to take all actions necessary or appropriate to carrying out the terms of this Resolution and the Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this _____ day of _____, 2013, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

_____

Kenny J. Evans, Mayor

JUN 20 2013 D.5*

ATTEST:

Silvia Smith, Town Clerk

APPROVED AS TO FORM:

Timothy M. Wright, Town Attorney

EXHIBIT A
TO
RESOLUTION 2726

MPD Agreement No	**JPA 13-117**
AG Contract No	**P0012011001584**
CAR Agreement No	
Project No	**E4S1H01C**
CFDA	**State Funded**
Project Description	**ADOT Airport Pavement Management System Program**
Airport	**Payson Airport**

JOINT PROJECT AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF PAYSON

THIS AGREEMENT JPA 13-117 is entered into this _____ day of _____, 2013, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, by and between the STATE OF ARIZONA acting by and through the ARIZONA DEPARTMENT OF TRANSPORTATION, herein referred to as the "STATE" and the TOWN OF PAYSON, a political subdivision of the State of Arizona, herein referred to as the "SPONSOR". The State of Arizona, Arizona Department of Transportation and Town of Payson are collectively referred to as the "Parties", and individually as STATE, SPONSOR, and "Party".

I. RECITALS

1. The STATE is empowered by Arizona Revised Statutes Section 28-8202.D and 28-401.A to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the STATE.

2. The SPONSOR is empowered by Arizona Revised Statutes Section 28-8413 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the SPONSOR.

3. The STATE and SPONSOR desire to share in costs incident to pavement preservation at the Payson Airport, hereinafter referred to as the Project. It is contemplated that this Project will be constructed by the STATE during STATE fiscal year 2014. The Project will include RWY 6-24 Crack Seal/Seal Coat; TWY A Crack Seal/Seal Coat; RWY 6-24 Mill and replace PFC. The STATE will pay all engineering, construction administration, and construction costs during the Project.

4. The estimated cost of the Project is $561,064.00. The SPONSOR shall contribute 10% of the Project cost. Payment of 10% of the estimated Project Cost ($56,106.40) is due and payable upon signing this Agreement and must be received by the STATE at its Arizona Department of Transportation, Multimodal Planning Division before Notice to Proceed for construction will be issued.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. RESPONSIBILITIES

1. The STATE shall:

   a. Conduct investigations and prepare to FAA, State, or Local standards design plans, specifications and such other documents and services required for design, project coordination, construction bidding and construction.

   b. Advertise for Project bids and award one or more construction contracts for the Project, administer same, and make all payments to the contractor(s).

   c. Provide final inspection and acceptance of the Project.

   d. Subsequent to Project completion, determination of final quantities, and approval and acceptance of the Project, produce and submit to the SPONSOR a final accounting reconciliation of the Project costs. In the event that actual Project costs exceed the estimate, the STATE will invoice the SPONSOR for the remaining contribution required to equal 10% of the actual Project costs. In the event that the actual Project costs were less than the estimate, the STATE will reimburse the SPONSOR for any overpayment.

   e. Reimburse the SPONSOR for any contribution that exceeded 10% of the final Project costs within 30 days of submitting the final accounting reconciliation of the Project costs to the SPONSOR.

2. The SPONSOR shall:

   a. Remit payment of 10% of the estimated Project cost of as documented in the Recitals of this Agreement to: Arizona Department of Transportation, Multimodal Planning Division Finance and Administration, Mail Drop 310B, 206 S. 17th Avenue, Phoenix, AZ 85007. Payment is due and payable upon signature of this Agreement and must be received by the STATE at its Arizona Department of Transportation, Multimodal Planning Division before notice to proceed for construction will be issued.

   b. Provide access to the Airport to the STATE, the STATE's representative, and the contractor for the purpose of preparing design plans and specifications for the Project, constructing the Project, and administering the construction of the Project.

   c. Coordinate with the STATE and approve safety plans, security plans, phasing plans, and construction schedules prepared by the STATE.

   d. Coordinate with airport users, issue NOTAM's as required, and provide operations support during construction, as needed.

   e. Remit to the STATE at its Arizona Department of Transportation, Multimodal Planning Division, the SPONSOR's contribution to the Project, based on the estimate provided, when submitting the signed copy of this Agreement for final execution.

   f. Upon completion and acceptance of the Project by the STATE, provide maintenance of the airport pavements improved with the Project.

   g. Shall abide by and enforce the SPONSOR Assurances incorporated herein as Exhibit A.

h. Remit to the STATE at its Arizona Department of Transportation, Multimodal Planning Division within 30 days of receiving an invoice for any additional contribution required subsequent to the post-completion Project accounting cost reconciliation.

III. MISCELLANEOUS PROVISIONS

1. This Agreement is governed according to the laws of the State of Arizona. All cited statutes, public law, executive orders, and policies cited in this Agreement are incorporated by reference as a part of this Agreement.

2. This Agreement shall become effective upon signature by the Parties hereto and shall remain in force and effect for a period not to exceed 90 days beyond Project completion; provided however, that this Agreement may be cancelled at any time prior to the commencement of performance under this Agreement, upon thirty (30) days written notice to the other Party.

3. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. If the SPONSOR fails to comply with any of this Agreement, the STATE, by written notice to the SPONSOR, may suspend participation until appropriate corrective action has been taken by the SPONSOR.

5. The STATE reserves the right to terminate this Agreement in whole or in part due to failure of SPONSOR to carry out any term, promise, or condition of the Agreement. The STATE will issue a written notice to SPONSOR for failure to adequately perform, or if there is reason for the STATE to believe that the SPONSOR cannot or will not adequately perform the requirements of the Agreement. If SPONSOR does not submit a Corrective Action Plan to the satisfaction of the STATE within a ten (10) day period, then the STATE , by written notice to the SPONSOR, may terminate the Agreement in whole or in part. The notice of termination will contain the reasons for termination, the effective date, and costs incurred prior to termination. The SPONSOR shall reimburse the State any costs incurred prior to the date of termination.

6. When the continuation of the Project will not produce beneficial results commensurate with the further expenditure of funds, or when funds are not appropriated or are withdrawn for use hereunder, the STATE may terminate this Agreement. In the case where continuation of the Project will not produce beneficial results, the STATE and the SPONSOR shall mutually agree upon the termination either in whole or in part.

7. No waiver of any condition, requirement or right expressed in this Agreement shall be implied by any forbearance of the STATE to declare a default, to declare a failure to perform, or to take any other action on account of the violation, nor shall such violation be continued or repeated.

8. All parties shall comply with all applicable Federal, State and Local requirements including all applicable provisions of Title 14 (Aeronautics and Space Chapter I – Federal Aviation Administration, Department of Transportation) and Title 49 (United States Department of Transportation) and other applicable Codes of Federal Regulations where and when relevant.

9. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this Agreement.

10. In the event of any controversy which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

11. This Agreement may be amended upon mutual Agreement of the Parties at any time when in the best interest of the STATE or SPONSOR.

12. Every payment obligation of the STATE under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the STATE at any time. No liability shall accrue to the STATE in the event this provision is exercised, and the STATE shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

13. All, Parties shall retain all data, books, and other records relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by the STATE at reasonable times as set forth in A.R.S. 35-214, 49 CFR 18.26 and the requirements of OMB Circular A-133.

14. Each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

    In addition, the STATE shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless Town of Payson, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the STATE's contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

15. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 USC. 12101-12213) and all applicable Federal regulations under the ACT, including 28 CFR Parts 34 and 36. SPONSOR shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, Arizona State Executive Order 2009-09, or A.R.S. 41–1461 through 1465, which mandates that all persons, regardless of race, color, religion, sex age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and

regulations, including the Americans With Disabilities Act. SPONSOR shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.

16. To the extent applicable under Arizona Revised Statutes Section 41-4401, each Party and its subcontractors warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statutes Section 23-214(A). A breach of the above-mentioned warranty by any Party or its subcontractors shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the non-breaching Parties. Each Party retains the legal right to randomly inspect the papers and records of the other Parties or its subcontractor employees who work on the Agreement to ensure that the Parties or its subcontractors are complying with the above-mentioned warranty.

17. Pursuant to Arizona Revised Statutes Sections 35-391 and 35-393, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in Arizona Revised Statutes Section 35-391 or 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

18. Either Party has the right to terminate the Agreement, in whole or in part at any time, when in the best interests of the STATE and/or SPONSOR, without penalty or recourse.

19. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

For Agreement Issues:

	Arizona Department of Transportation	**Town of Payson**
Contract Administrator	Sally J. Palmer Contracts Administrator	LaRon Garrett
Mailing Address	Multimodal Planning Division Mail Drop 310B 206 S. 17th Avenue Phoenix, AZ 85007	303 North Beeline Highway Payson, AZ 85541
Phone	602-712-6732	928-474-5242 x 283
Fax	602-712-3046	
Email	spalmer@azdot.gov	lgarrett@paysonaz.gov

For Technical / Program Issues:

	Arizona Department of Transportation	**Town of Payson**
Project Manager	Holly L. Hawkins, P.E. State Airport Engineer	LaRon Garrett
Mailing Address	MPD – Aeronautics Group Attn: APMS Mail Drop 426M 206 S. 17th Avenue Phoenix, AZ 85007	303 North Beeline Highway Payson, AZ 85541
Phone	602-712-8333	928-474-5242 x 283
Fax	602-712-3838	
Email	hhawkins@azdot.gov	lgarrett@paysonaz.gov

20. Attached hereto and incorporated herein is the written determination of each Party's legal counsel that the Parties are authorized under the laws of this STATE to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

Town of Payson	**STATE OF ARIZONA** **Arizona Department of Transportation**
By _____	**By** _____ Joseph S. Omer, Director Multimodal Planning Division
_____ (Date)	_____ (Date)

APPROVAL OF TOWN OF PAYSON

I have reviewed the above referenced proposed joint partnering Agreement, between the STATE OF ARIZONA, ARIZONA DEPARTMENT OF TRANSPORTATION (STATE), and TOWN OF PAYSON and declare this Agreement to be in proper form and within the powers and authority granted to TOWN OF PAYSON under all applicable laws. No opinion is expressed as to the authority of the STATE to enter into this Agreement.

DATED this _____ day of_____, 2013

_____

Attorney for Town of Payson

Page Reserved for AZ AG Determination

EXHIBIT A
SPONSOR ASSURANCES

These assurances will become a part of this Agreement. The SPONSOR hereby covenants and agrees with the STATE as follows:

1) That the Project is consistent with plans (existing at the time of approval of the Project) of public entities authorized by the STATE to plan for the development of the area surrounding the Airport.

2) That it will furnish to the STATE each quarter a current listing of all aircraft based on the Airport.

3) That these covenants shall become effective upon execution of this Agreement for the Project or any portion thereof, made by the STATE and shall constitute a part of the Agreement thus formed and shall remain in full force and effect throughout the useful life of the facilities developed under the Project, but not to exceed twenty (20) years.

4) That it is the owner or lessee of the property or properties on which the airport is located and that the lease guarantees that the SPONSOR has full control of the use of the property for a period of not less than twenty (20) years from the date of this Agreement. All changes in airport ownership or to an airport lease shall be approved by the STATE.

5) To restrict the use of land, adjacent to or in the immediate vicinity of the Airport, to activities and purposes compatible with normal Airport operations and to take appropriate action including the adoption of appropriate zoning laws.

6) To promote safe airport operations by clearing and protecting the approaches to the airport by removing, lowering, relocating, marking and/or lighting existing airport hazards and to prevent, to the extent possible, establishment or creation of future airport hazards.

7) To operate the Airport for the use and benefit of the public and to keep the Airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes; provided that the SPONSOR shall establish such fair, equal and nondiscriminatory conditions to be met by all users of the Airport as may be necessary for the safe and efficient operation of the Airport; and provided further, that the SPONSOR may prohibit any given type, kind or class of aeronautical use of the Airport if such use would create unsafe conditions, interfere with normal operation of aircraft, or cause damage or lead to the deterioration of the runway or other Airport facilities.

8) To suitably operate and maintain the Airport and all facilities thereon or connected therewith which are necessary for Airport purposes and to prohibit any activity thereon which would interfere with its use for aeronautical purposes and to operate essential facilities, including night lighting systems, when installed, in such manner as to assure their availability to all users of the Airport; provided that nothing contained herein shall be construed to require that the Airport be operated and maintained for aeronautical uses during temporary periods when snow, flood or other climatic conditions interfere substantially with such operation and maintenance.

9) To refrain from entering into any transaction which would deprive the SPONSOR of any of the rights and powers necessary to perform any or all of the covenants made herein, unless by such transaction the obligation to perform all such covenants is assumed by another public agency eligible to assume such obligations and having the power, authority and financial resources to carry out such obligations; and, if an arrangement is made for management or operation of the Airport by an agency or person other than the SPONSOR, the SPONSOR will reserve sufficient powers and authority to insure that the Airport will be operated and maintained in accordance with these covenants.

10) To maintain a current Airport Layout Plan (ALP) of the airport, which shows building areas and landing areas, indicating present and planned development and to furnish the STATE an updated ALP of the Airport as changes are made.